

**TRANSMITTAL AND NOTICE OF APPROVAL OF
STATE PLAN MATERIAL**

FOR: HEALTH CARE FINANCING ADMINISTRATION

1. TRANSMITTAL NUMBER:

04 - 19

2. STATE:

Michigan

3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL
SECURITY ACT (MEDICAID)

4. PROPOSED EFFECTIVE DATE

November 1, 2004

TO: REGIONAL ADMINISTRATOR
HEALTH FINANCING ADMINISTRATION
DEPARTMENT OF HUMAN SERVICES

5. TYPE OF PLAN MATERIAL (*Check One*):

☐ NEW STATE PLAN ☐ AMENDMENT TO BE CONSIDERED AS NEW PLAN ☒ AMENDMENT

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (*Separate Transmittal for each amendment*)

6. FEDERAL STATUTE/REGULATION CITATION:

42 CFR 488 Subparts E & F

7. FEDERAL BUDGET IMPACT:

a. FFY 05 \$ -0-
b. FFY 06 \$ -0-

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:

Attachment 4.35-E, pages 1 thru 4
Attachment 4.35-H, page 1

9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION
OR ATTACHMENT (*If Applicable*):

Attachment 4.35-E, pages 1 thru 3; Supplement 1 to
Attachment 4.35-E, pages 1 thru 13; and,
Attachment 4.35-H, page 1

10. SUBJECT OF AMENDMENT:

Nursing Facility Certification

11. GOVERNOR'S REVIEW (*Check One*):

- ☐ GOVERNOR'S OFFICE REPORTED NO COMMENT
☐ COMMENTS OF GOVERNOR'S OFFICE ENCLOSED
☐ NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

☒ OTHER, AS SPECIFIED:
Paul Reinhart, Director
Medical Services Administration

12. SIGNATURE OF STATE AGENCY OFFICIAL:

13. TYPED NAME:

Paul Reinhart

14. TITLE:

Director, Medical Services Administration

15. DATE SUBMITTED:

December 27, 2004

16. RETURN TO:

Medical Services Administration
Program/Eligibility Policy Division - Federal Liaison Unit
Capitol Commons Center - 7th Floor
400 South Pine
Lansing, Michigan 48933

Attn: Nancy Bishop

FOR REGIONAL OFFICE USE ONLY

17. DATE RECEIVED:

12/28/04

18. DATE APPROVED:

PLAN APPROVED - ONE COPY ATTACHED

19. EFFECTIVE DATE OF APPROVED MATERIAL:

20. SIGNATURE OF REGIONAL OFFICIAL:

21. TYPED NAME:

David A. Ruffolo

22. TITLE:

Medical Services Administrator

23. REMARKS:

DEC 28 2004

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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of MICHIGAN

Eligibility Conditions and Requirements

Enforcement of Compliance for Nursing Facilities Civil Money Penalty:

☐ Specified Remedy

☒ Alternative Remedy

Civil Money Penalty – Alternate Remedy

A civil money penalty (CMP) may be assessed for any Level 2 or higher deficiency, but is primarily assessed for F-SQC or Harm deficiencies, and Level 2 deficiencies following removal of an Immediate Jeopardy.

The State Survey Agency (SSA) may consider using a Per Instance Civil Money Penalty of \$1,000 to \$10,000 when the beginning date of the deficiency cannot be determined, or when a Civil Money Penalty is combined with other enforcement actions, e.g. a discretionary denial of payment for new admissions, a directed plan of correction, or a directed in-service training.

The total civil money penalties assessed cannot exceed \$3,000 per day or \$10,000 per instance. For Immediate Jeopardy citations, a minimum of \$3,000 per day or per instance up to a maximum of \$10,000 per day or per instance is assessed.

No Opportunity to Correct

Providers will not be given an opportunity to correct deficiencies before remedies are imposed when they have deficiencies of actual harm (or higher) on the current survey event, as well as on the previous standard survey or any intervening survey. The previous harm (or higher) level deficiency must have been in a completed survey cycle with compliance verified. The MDCH will impose either a Civil Money Penalty or Denial of Payment for New Admissions, or both. The MDCH may impose other optional federal remedies, described by remedy category at the end of this section. Enforcement remedies imposed under state licensure authority are also specified.

Opportunity to Correct

An opportunity to correct deficiencies before remedies are imposed is not assured. The SSA has no obligation to give a provider an opportunity to correct deficiencies prior to imposing remedies and must only meet the minimum notice requirements that are applicable to the imposition of remedies. At the SSA's discretion, it may provide facilities an opportunity to correct deficiencies before remedies are imposed when they do not meet the criteria for "No Opportunity to Correct."

When an opportunity to correct deficiencies before remedies are imposed is offered, the SSA will request an acceptable plan of correction; provide initial notice of possible enforcement action; conduct a revisit (if applicable); and, provide formal notice of other remedies if noncompliance continues at revisit. While formal notice of denial of payment for new admissions is generally provided in the first revisit letter, the SSA may provide it to the facility in the initial deficiency notice.

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TN No.: 99-07

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of MICHIGAN

Chapter

The MDCH must impose a Denial of Payment for New Admissions (DPNA) no later than three months after the last day of the survey that identified the noncompliance if substantial compliance is not achieved.

The MDCH may impose either a per day or per instance Civil Money Penalty for past noncompliance for days of noncompliance after the finding is made, or a combination thereof. Amounts will be determined by the MDCH based on facility history, repeating deficiencies, high number of deficiencies, culpability of the provider, failure to achieve or maintain substantial compliance and for increasing noncompliance.

Prior notice is not required before the imposition of CMPs. A penalty equivalent to a one-day penalty will apply in all circumstances even if the violation(s) is immediately corrected. The daily penalty will end on the day prior to the determination of substantial compliance, or on the day prior to the determination that a civil money penalty is no longer warranted. The SSA determines compliance. CMP amounts may be increased to reflect changes in levels of noncompliance at revisit or for repeat deficiencies.

The SSA has developed a CMP schedule for Immediate Jeopardy and Harm or Potential Harm occurrences to promote a consistent application of penalties. The CMP schedule conforms to 42 CFR 488.408 and is intended to cover the majority of cases of CMP imposition. Situations may occur that justify exceptions.

Accrual of CMPs ceases when one of the following situations occurs:

- the facility is determined by the SSA to have achieved substantial compliance
- closure of a facility as evidenced by the filing of a notice of discontinuance of operation with the Michigan Department of Community Health under section 21785 of Act 368 of the Public Acts of 1978, as amended, being 333.21785 of the Michigan Compiled Laws.
- termination of a provider agreement

Installment schedules are not allowed for payment of CMPs. Civil money penalties are not allowable Medicaid costs.

Use of CMP Funds

Money collected by the State Medicaid Agency (SMA) as a result of civil money penalties is held in a special fund to be applied to the protection of the health or property of residents of any nursing facility that MDCH finds deficient. Money recovered by the SMA from funds due a facility (because of lack of payment of civil money penalties by the facility) is also deposited in this fund.

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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of MICHIGAN

Eligibility Conditions and Requirements

Failure to Re-admit a Qualified Medicaid Resident

A daily Civil Money Penalty (CMP) of \$400 will be imposed when an enrolled Medicaid facility refuses to re-admit a qualified Medicaid resident (as defined by CMS) following hospitalization. An opportunity to correct will not be provided. This daily CMP will start on the date validated by MDCH that nursing home readmission should have occurred. The daily \$400 CMP continues until the resident is offered the next qualifying available Medicaid bed at the refusing facility, or the resident is placed in another suitable facility. The refusing facility will be notified by the SSA when an allegation of failure to readmit a qualified Medicaid resident is being investigated.

Alternate Remedy is as Effective in Deterring Non-compliance.

Imposition of CMPs conforms to the regulation. The alternative component of MDCH's application of the remedy is that repayment schedules are not allowed. If the entire penalty amount is not voluntarily submitted within 30 days of notice that the CMP is due and payable or within 15 days of issuance of appeal results, the CMP amount is recovered in total by gross adjustment against the facility's next available Medicaid warrant or during final cost settlement in a change of ownership. Therefore, interest does not accrue. This alternative to the federal regulation of requiring collection of daily interest has been found to be administratively simple. Fine collection is not unduly delayed. Disallowing penalty payment schedules reduces paperwork for MDCH and providers and saves time in negotiating penalty payment schedules.

Federal Enforcement Remedies

Each federal remedy below is described in rules as stated in 42 CFR 488 et.seq., and further discussed in the CMS State Operations manual for Medicaid and/or Medicare certified facilities. Federal remedies available to MDCH or CMS include, but are not limited to:

Category One:

- State Monitoring
- Directed Plan of Correction
- Directed In-service Training

Category Two:

- Denial of Payment for new Admissions
- Denial of Payment for All Individuals, Imposed by CMS
- Civil Money Penalties \$50 to \$3,000
- Administrative/Clinical Advisor (Additional Remedy)

Category Three:

- Temporary Management

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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of MICHIGAN

Eligibility Conditions and Requirements

- Termination of Medical Assistance Provider Enrollment and Trading Partner Agreement
- Civil Money Penalties \$3,050 to \$10,000
- Transfer of residents
- Closure of Facility with Transfer of Residents
- Alternative or specified state remedies approved by CMS

The SSA has the option of imposing any state or federal remedy based on the facility's failure to maintain compliance, deficiencies cited within the same regulatory grouping that repeat within the last 24 months (or two standard survey cycles), and the degree of culpability of the facility. In addition to federal remedies, the SMA may accept one or more of the following enforcement actions taken by the SSA under state licensure authority.

Michigan Enforcement Rules for Long Term Care Facilities at R 330.11001-330.11017:

- Emergency Order Limiting, Suspending or Revoking a License
- Notice of Intent to Revoke Licensure
- Correction Notice to Ban Admissions or Readmissions
- Transfer Selected Patients; Reduce Licensed Capacity; or Comply with Specific Requirements
- Appointment of a Temporary Manager/Advisor
- State Patient Rights Penalties, if applicable

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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of MICHIGAN

Eligibility Conditions and Requirements

Enforcement of Compliance for Nursing Facilities Additional Remedies:

Public Notice – Additional Remedy

This additional remedy will be used in conjunction with other federally specified remedies. When public notice is utilized, the state survey agency will issue it (under State licensure authority) using the process specified in part 333.21799b, section 21799b(1)(e) of the Michigan Public Health Code. When public notice is utilized the information will be published in a daily newspaper of general circulation in the area in which the nursing facility is located. The notice will include the action taken by the State and the conditions that caused the corrective action to be taken. The state survey agency will post notice of the corrective actions at the facility. Public Notice is a Category One remedy.

Temporary Administrative or Clinical Advisor or Both – Additional Remedy

This additional remedy will be used in conjunction with other federally specified remedies. It is the responsibility of the temporary clinical or administrative advisor to mentor facility personnel. This includes, but is not limited to:

- Counsel and teach clinical staff and administration regarding maintenance of compliance over time.
- Reinforce and support appropriate/optimal patterns of care.
- Specific duties of the advisor for each facility placement shall be outlined in a written plan.
- If specific deficient practices affecting health and safety, not addressed in the written plan should occur during the appointment of the advisor, it would be the responsibility of the advisor to work with the facility and licensing staff to address and correct those issues.

Temporary Administrative or Clinical Advisor as an Additional Remedy is a Category Two Remedy.

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